



Perform Environmental Due Diligence for Phase 1

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Summary

Address with your client how to perform the steps in environmental due diligence for Phase I, to be completed by an environmental consultant. We completed legal editing and analysis of authorities cited here as of the date listed above.

Step 1: Review the Standards for Due Diligence

Environmental due diligence must include compliance with the “all appropriate inquiries” (AAI) standard. (See 40 C.F.R. § 312.) In the environmental context, AAI refers to the due diligence process that must be undertaken to determine the environmental condition of a property before it is acquired. This process is guided by standards and practices established by the Environmental Protection Agency (EPA) in accordance with the American Society for Testing and Materials (ASTM). The ASTM standards mandate the preparation of a Phase I environmental assessment report, which must adhere to the guidelines outlined in the ASTM document Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.

⚠️ Caution

Effective February 14, 2024, consultants must conduct Phase I assessments according to the newer ASTM 1527.21 standard to meet AAI requirements. (40 C.F.R. § 312.)

A Phase I assessment in California also must comply with EPA regulations to fulfill the AAI standard, as indicated by the requirements set forth in the California Health and Safety Code and the California Code of Regulations. (Health & Saf. Code, § 25403; Cal. Code Regs., tit. 22, § 69104.)

Step 2: Understand the Goals of Phase I

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Phase I serves to identify potential environmental concerns. A Phase I assessment meets the AAI standard by having the environmental consultant follow several steps:

- A thorough document review;
- On-site visit and visual observations of the property;
- Interviews of current and former property representatives to uncover potential contamination; and
- Report preparation.

(See Health & Saf. Code, § 78090.)

Phase I assessments do not involve environmental sampling, *e.g.*, of soil or groundwater, nor do they address concerns like lead paint, asbestos, radon, or the property's compliance with environmental regulations and permit requirements. However, you may opt to delve into these areas outside of Phase I requirements when necessary or appropriate.

Step 3: Review Documents

A. Public Records

The environmental consultant should review records by searching publicly available information from federal, state, tribal, and local databases for known and suspected sites of environmental contamination and areas of potential environmental significance. Some of the available public governmental and regulatory databases include the following:

- Air quality management districts;
- Regional water quality control boards;
- California Department of Toxic Substances Control;
- Building departments;
- Department of Conservation, California Geologic Energy Management Division (CalGEM) for Oil and Gas;
- Mapped database records search;
- EPA's Superfund National Priorities List (NPL);